

AMENDED IN ASSEMBLY APRIL 14, 2010

CALIFORNIA LEGISLATURE—2009—10 REGULAR SESSION

ASSEMBLY BILL

No. 2664

Introduced by Assembly Member Chesbro

February 19, 2010

An act to add Sections 6224.3, 6224.4, and 6224.5 to the Public Resources Code, relating to public lands.

LEGISLATIVE COUNSEL'S DIGEST

AB 2664, as amended, Chesbro. Public lands: State Lands Commission: violations.

Existing law establishes the State Lands Commission in the Natural Resources Agency. Under existing law, the commission classifies state land for its different possible uses and has jurisdiction over various state lands.

This bill would prohibit a person from constructing, placing, maintaining, owning, using, or possessing a structure or facility on land under the commission's jurisdiction, ~~unless a all necessary easement, lease, permit, or easements, leases, permits, and other instrument instruments~~ required by law that ~~authorizes~~ authorize the construction, design, placement, maintenance, ownership, use, or possession of the structure or facility ~~has~~ have been obtained.

This bill would establish a civil penalty or fee for a violation of that provision. A person who violates that provision would either be liable for a penalty of not more than \$1,000 a day or assessed a monthly use and occupancy fee that is not more than 60% higher than *the* full fair market rental for each day that a violation occurs. The bill would state criteria for determining the appropriate penalty or fee.

The bill—would—also, among other things, *also would* establish procedures to enjoin such activity, remove a violating structure or facility, and serve notice of any violation.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 6224.3 is added to the Public Resources
2 Code, to read:
3 6224.3. (a) A person shall not construct, place, maintain, own,
4 use, or possess a structure or facility on land under the
5 commission's jurisdiction unless ~~a necessary easement, lease,~~
6 ~~permit, or other instrument~~ *all necessary easements, leases,*
7 *permits, and other instruments* required by law that ~~authorizes~~
8 *authorize* the construction, design, placement, maintenance,
9 ownership, use, or possession of the structure or facility ~~has~~ *have*
10 been obtained.
11 (b) A person who violates subdivision (a) shall either be liable
12 for a penalty of not more than one thousand dollars (\$1,000) a day
13 or assessed a monthly use and occupancy fee that is not more than
14 60 percent higher than *the* full fair market rental for each day that
15 a violation occurs.
16 (c) In determining the appropriate penalty or fee described in
17 subdivision (b), the commission shall consider all of the following
18 factors:
19 (1) The physical extent of the violation on the land under the
20 commission's jurisdiction.
21 (2) The degree of culpability of the violator.
22 (3) The degree of cooperation of the violator.
23 (4) The past history of the violator in taking all feasible steps
24 or procedures necessary or appropriate to correct a violation.
25 (5) The violator's prior violations of statutes, rules, orders, or
26 leases pertaining to lands under the commission's jurisdiction.
27 (6) The impact the violation causes on the environment to public
28 access, the public trust, or other property interests under the
29 commission's jurisdiction.
30 (7) Any matters relevant to a fair and just result.
31 (8) Any other factors determined by the commission to be
32 relevant and consistent with the policy of the commission.

1 (d) The penalty and fee described in this section shall be
2 imposed from the first day of the violation to the day the violation
3 ends.

4 (e) If the penalty or fee described in this section is not paid
5 within the time allowed under the final order, interest shall accrue
6 at the rate prescribed by Section 6224. The final order may be
7 recorded with the county clerk in any county of this state and shall
8 have the same force, effect, and priority as a judgment lien.

9 (f) The commission may enjoin a person who violates
10 subdivision (a) from continuing that violation.

11 (g) The commission may require a person who violates
12 subdivision (a) to remove the structure or facility at the person's
13 own expense. If the violator refuses to remove the structure or
14 facility, or if the violator cannot be located, the commission may,
15 at its own expense, remove the structure or facility from the land
16 under the commission's jurisdiction. The commission may pursue
17 whatever legal remedies are available to recover the removal costs
18 from the violator, including placing a lien on the assets of the
19 violator.

20 (h) The commission may elect to take ownership of the structure
21 or facility as a fixture and may exercise the state's rights as owner
22 of the structure or facility.

23 (i) For the purposes of this section, a structure or facility shall
24 include, but is not limited to, buildings, boat houses, docks, piers,
25 revetment, fill, pilings, pipelines, groins, jetties, sea walls,
26 breakwaters, and bulkheads.

27 (j) The remedies provided in this section shall be obtained by
28 the commission through administrative action or by the Attorney
29 General through civil action. If the Attorney General prevails in
30 a civil action for a violation of this section, the state shall be
31 awarded attorney's fees and costs.

32 (k) The remedies provided by this section are in addition to and
33 not in lieu of any other penalty or sanction provided by law.

34 (l) The commission may adopt regulations necessary or useful
35 to carry out this section.

36 SEC. 2. Section 6224.4 is added to the Public Resources Code,
37 to read:

38 6224.4. (a) If the commission elects to pursue any of the
39 remedies provided under Section 6224.3 through an administrative
40 action, the commission shall first provide a 30-day notice to the

1 person against whom it seeks to impose any of the remedies. The
2 notice shall include all of the following:

3 (1) The date, time, and location of the commission hearing
4 where the person may appear and be heard.

5 (2) A statement of the authority and jurisdiction under which
6 the hearing is to be held.

7 (3) A reference to the particular sections of the statutes and rules
8 involved.

9 (4) A short and plain statement of the matters asserted or
10 charged, including a description of the violation complained of
11 with reasonable certainty as to its character and location.

12 (5) A statement indicating whether and under what
13 circumstances an order by default may be entered.

14 (b) In lieu of personal service, service of notice may be made
15 by registered mail and by posting a copy of the notice on the
16 structure or facility that is in violation of subdivision (a) of Section
17 6224.3.

18 (c) If the person fails to appear at the noticed hearing, the
19 commission may make a final order.

20 (d) A hearing may be scheduled as a regular calendar item at a
21 properly noticed commission meeting.

22 SEC. 3. Section 6224.5 is added to the Public Resources Code,
23 to read:

24 6224.5. If, at the time this section is enacted, a person is in
25 violation of subdivision (a) of Section 6224.3, that person shall
26 have six months to remedy the violation or have a completed lease
27 application with all fees and costs submitted to the commission
28 without being subject to a penalty or fee. The remedy may include,
29 but is not limited to, entering into an appropriate lease with the
30 commission or adequately removing the structure or facility.